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16 UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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18 Vera, Luis Javier Vazquez, and Kyle  
Kingsbury on behalf of themselves and all  
19 others similarly situated,

20 Plaintiffs,

21 v.

22 Zuffa, LLC, d/b/a Ultimate Fighting  
Championship and UFC,

23 Defendant.

Case No.: 2:15-cv-01045-RFB-(PAL)

**DEFENDANT ZUFFA, LLC'S  
MOTION FOR SUMMARY  
JUDGMENT**

**HEARING REQUESTED**

**[REDACTED]**

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Defendant Zuffa, LLC (“Zuffa”) submits this motion for summary judgment and supporting memorandum of points and authorities and seeks judgment in its favor as to all of Plaintiffs’ claims on the grounds described below.

### INTRODUCTION

The history of Zuffa’s ownership of the Ultimate Fighting Championship (“UFC”) shows the rewards of risk taking and competition for the U.S. economy: Zuffa has built a business and a sport from nothing to success that benefits its athletes, its shareholders, and the regions in which it operates. Zuffa purchased the UFC in 2001 for \$2 million when all it represented was a tarnished brand name and a failing business. Concise Statement of Undisputed Facts (“SUF”) ¶ 3 Ex. 1, Fertitta Dep. 147:15-17, 296:8-9<sup>1</sup>. The UFC grew into a \$4 billion professional sport by 2016. *Id.* 32:13-17, 33:11-13. Without Zuffa’s efforts to legitimize Mixed Martial Arts (“MMA”), MMA athletes in this proposed class action literally would not have had the opportunity to fight and earn a living from this sport. And as the UFC has grown, Zuffa has consistently increased the amount paid to athletes who compete in MMA bouts and been an industry-leader in compensation. SUF ¶¶ 8-9.

Plaintiffs, none of whom currently are under contract to compete in UFC bouts (SUF ¶ 26), brought this antitrust putative class action, alleging that Zuffa monopolized the market for the promotion of “Elite Professional MMA bouts” and monopsonized the market for “Elite Professional MMA Fighter services.” Plaintiffs seek to represent a “Bout Class” comprising athletes who have competed in a UFC bout during the Class Period from December 16, 2010 to present, as well as an “Identity Class” comprising athletes whose identities Zuffa allegedly expropriated during the Class Period. Cons. Am. Compl., ECF No. 208 (“CAC”) ¶¶ 27, 39, 47.

In opposition to Zuffa’s motion to dismiss, Plaintiffs explained that their complaint described a combined theory of monopsonization and monopolization, and the Court denied the motion to dismiss on that basis. *Le v. Zuffa*, 5:14-cv-05484-EJD, ECF. No. 71 at 1-2 (N.D. Cal.

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<sup>1</sup> All citations are to exhibits to the Declaration of Suzanne Jaffe Nero (“Nero Decl.”) unless otherwise noted.

1 Apr. 10, 2015) (“the UFC’s monopoly and monopsony power were mutually reinforcing. The  
2 scheme enabled the UFC to injure MMA fighters . . .”); *Le v. Zuffa*, 216 F. Supp. 3d 1154, 1163  
3 (D. Nev. 2016) (“In this case, as in *Weyerhaeuser*, the Plaintiffs allege that the Defendant  
4 engaged in both monopolistic and monopsonistic behavior”). After two years of discovery, in  
5 seeking class certification, Plaintiffs abandoned their monopolization theory, alleging a “Scheme”  
6 that makes no mention of Zuffa’s alleged monopolization of the market for promotion of live  
7 Elite Professional MMA Fighter bouts. Pls. Mot. for Class Certification, ECF No. 518.  
8 Opposing Zuffa’s *Daubert* motions, Plaintiffs admitted that they “seek to recover only for under-  
9 compensation so Zuffa’s monopoly power is not relevant to their theory of injury.” *Daubert* Opp.  
10 ECF No. 534 at 36-37.

11 The remaining monopsonization theory standing on its own—the type of claim that the  
12 Ninth Circuit has questioned as “counterintuitive”—fails as a matter of law. *Le*, 216 F. Supp. 3d  
13 at 1163 (quoting *United States v. Syufy Enterprises*, 903 F.2d 659, 663 (9th Cir. 1990)). This  
14 case runs contrary to accepted antitrust principles and seeks a ruling that would undermine  
15 competition, innovation, and new businesses.

16 First, Plaintiffs have failed to define a monopsony market because, contrary to the  
17 accepted small but significant non-transitory increase in price (SSNIP) test for defining a market,  
18 Plaintiffs have not attempted to identify the MMA promoters in the market and instead have  
19 relied on arbitrary rankings of athletes.

20 Second, Plaintiffs cannot show direct evidence of monopsony power. It remains  
21 undisputed that, in actual dollars, Zuffa has paid athletes progressively more throughout the Class  
22 Period. *SUF* ¶ 8. In place of looking at actual compensation, Plaintiffs argue that wage share  
23 (the percentage of event revenue paid as athlete compensation) can serve as direct evidence of  
24 harm. No case supports this view and the theory fails as a matter of law because it disregards the  
25 carefully crafted limits of antitrust law that do not allow courts to act as “central planners.” *See*  
26 *Verizon Commc’ns Inc. v. Curtis V. Trinko, LLP*, 540 U.S. 398, 407-08 (2004). Plaintiffs’ other  
27  
28



1 allegations also do not establish that Zuffa *underpaid* its athletes during the Class Period.

2 Furthermore, nothing suggests that Zuffa restricted output or had more athletes than it needed.

3 Third, the record demonstrates that Zuffa did not engage in exclusionary conduct.

4 Throughout the Class Period, competitors had access to top athletes, and every MMA promoter  
5 who has testified in this case has said so. SUF ¶¶ 21-27. There is no testimony or document that  
6 shows that Zuffa's competitors have insufficient access to top athletes to compete.

7 Finally, summary judgment is appropriate on claims related to the Identity Class.

8 Plaintiffs have not independently analyzed the impact of the challenged conduct on the Identity  
9 Class apart from their expert's pronouncement that each member of the Identity Class is entitled  
10 to [REDACTED]. This type of conclusory analysis is insufficient to prove antitrust injury.

#### 11 **CONCISE STATEMENT OF UNDISPUTED FACTS**

12 1. MMA is an interdisciplinary sport that combines attributes of boxing, wrestling, karate,  
13 Muay Thai, Brazilian jiu jitsu, judo and other sports. CAC ¶ 59.

14 2. Zuffa puts on live MMA events where athletes compete in bouts for a ticketed audience.  
15 CAC ¶ 30. Zuffa broadcasts these events on pay-per-view ("PPV"), network and cable television,  
16 and through its streaming service, Fight Pass. Ex. 2 at -095; Ex. 3 at -205.

#### 17 History Of Zuffa And The UFC

18 3. In 2001, two businessmen and siblings, Frank and Lorenzo Fertitta, purchased the MMA  
19 promotion, the UFC, for \$2 million through their company, Zuffa. Ex. 1, Fertitta Dep. 30:13-16.  
20 When Zuffa bought the UFC "there really wasn't much to it except for an idea." *Id.* 296:3-4.  
21 The UFC was "losing money" and "probably the most tarnished brand in sports." *Id.* 147:15-17,  
22 296:8-9.

23 4. At the urging of Senator John McCain—who infamously labeled MMA "human  
24 cockfighting"—and others, 36 states banned MMA events. Ex. 1, Fertitta Dep. 147:17-21; Ex. 4,  
25 Topel I, ¶ 49; Ex. 5 at -983. By 1999, many PPV outlets refused to air MMA events, and PPV  
26 subscribers dropped. Ex. 4, Topel I ¶ 49.

5. To rehabilitate the UFC brand and grow the sport of MMA, Zuffa invested considerable time and tens of millions of dollars in the UFC. Ex. 4, Topel I ¶ 50; Ex. 6 at -440; Ex. 8, Epstein Dep. 460:20-461:6. Zuffa enlisted attorneys and regulatory consultants, Ex. 4, Topel I ¶ 51; Ex. 8, Epstein Dep. 15:16-20:6, and appeared before regulators in nearly every state. Ex. 8, Epstein Dep. 17:4-16. This effort to move MMA into the mainstream took years—in the early 2000s, “MMA, you know, was still a very niche market. It was something that, you know, not a lot of people knew about or people had misconceptions about it.” Ex. 9, Acquisitions Dep. 35:3-6.

6. In 2005, Zuffa agreed to pay \$10 million to produce *The Ultimate Fighter*, a reality show contest where multiple athletes competed for a contract with the UFC. Ex. 8, Epstein Dep. 200:8-201:24; Ex. 1, Fertitta Dep. 198:10-13; Ex. 10, Lawenda Decl. ¶ 3 (“Zuffa ultimately agreed to provide Spike with the show, all-expenses-paid”). When Spike “first began airing The Ultimate Fighter, most of [its] advertisers at Spike blacklisted the show.” Ex. 10, Lawenda Decl. ¶ 4. The show, however, debuted to successful ratings, and, for the first time, Zuffa’s owners could secure a television contract. Ex. 1, Fertitta Dep. 198:2-17. The Fertittas personally invested millions before they realized any profit from operating the UFC. Ex. 4, Topel I ¶ 50; Ex. 6 at -440; Ex. 8, Epstein Dep. 460:20-461:6.

## Growth Of The UFC In Events And Compensation

7. Since 2001, the number of UFC events steadily increased. In 2002, Zuffa promoted just 7 UFC events. Ex. 11. That number increased to 18 events in 2006, 32 events in 2010, and 41 in 2016. *Id.*; Ex. 8, Epstein Dep. 98:20-99:3; Ex. 4, Topel I ¶¶ 93.

8. Athlete compensation has increased since Zuffa acquired the UFC, including through the Class Period. Ex. 12, Singer Dep. II 459:22-23 (Plaintiffs' expert acknowledging that fighter compensation was rising); Ex. 13, Vera Decl. ¶ 3 ("Since joining the UFC, my compensation has increased substantially"); Ex. 14, Mersch Dep. 476:10-477:11 ("[REDACTED] [REDACTED]"); Ex. 15, Batchvarova Dep. 65:2-6 ("[REDACTED] [REDACTED]"); *id.* 75:10-11 ("[REDACTED] [REDACTED].");

1 [REDACTED]"); Ex. 4, Topel I ¶¶ 169-71 & Ex. 17-18  
 2 ("athletes at all levels of rankings enjoyed increases in compensation over the class period").

3 9. Zuffa often pays athletes more to compete in MMA bouts than other MMA promoters.  
 4 Ex. 16, Singer Dep. 192:13-17 ("the levels of a Bellator or a Strikeforce fighter on average would  
 5 tend to be below the levels of the UFC fighters"); Ex. 17, Fitch Dep. 146:12-23 (WSOF paid  
 6 Plaintiff Fitch 50-60% less than UFC previously paid him); Ex. 18, Le Dep. 102:11-16 (Plaintiff  
 7 Le confirming that Zuffa paid him more than under his Strikeforce contract).

8 10. Some UFC athletes have chosen to compete for UFC because of its high compensation  
 9 and skill as a promoter. Ex. 19, Serra Decl. ¶ 5 ("There are several reasons why I believe the  
 10 UFC is the best MMA organization to fight in," including providing "the best compensation and  
 11 incentives"); Ex. 20, Alves Decl. ¶ 3 ("My life changed when I started fighting in the UFC. I  
 12 now live a comfortable life where I can provide for my family"); Ex. 21, Reinhardt Dec. ¶ 3  
 13 ("Everything is better with the UFC than other promotions . . . Not only did my compensation  
 14 increase, my popularity, my fan base, my recognition, and everything else has increased as  
 15 well"); Ex. 22, Vera Dep. 233:10-17, 234:21-235:4 (Recognizing Zuffa's promotional ability and  
 16 well-run organization); Ex. 23, Edwards Decl. ¶ 5 ("the potential for fighters to earn bonuses" and  
 17 "the visibility of the fighters is beyond comparison"); Ex. 24, Belfort Decl. ¶ 6 (UFC "has  
 18 expended the most resources in promoting me and the events I fought in"); Ex. 25, Lauzon Decl.  
 19 ¶ 8 ("I could fight in many other promotions, but choose the UFC because I trust how they handle  
 20 their business and I know how I will be treated"); Exs. 26-45.

21 11. Between 2008 and 2015, Zuffa's residential PPV price was \$45 for standard definition  
 22 and \$55 for high definition. Ex. 46 at -020. In 2015, Zuffa implemented one \$5 increase in PPV  
 23 prices. Ex. 15, Batchvarova Dep. 201:10-15; Ex. 16, Singer Dep. 74:13-24. Zuffa executives  
 24 explained that the reason for this increase [REDACTED]  
 25 [REDACTED] Ex. 15, Batchvarova Dep. 201:16-25 ("[REDACTED]  
 26 [REDACTED]").

Zuffa And MMA Contracts

12. Zuffa enters into Promotional and Ancillary Rights Agreements (“Promotional Agreements”) with athletes for the exclusive right to secure, promote, arrange and present any and all of their MMA bouts during the term of the agreement. *E.g.*, Ex. 47 § 1; Ex. 48, Contracts Dep. 95:22-96:20.

13. The term of the agreement is typically 20 months with the possibility of tolling for events such as injury, retirement, and refusal to compete. Ex. 47 §§ 4.1, 9.1-9.3. Factoring in tolling and voluntary renegotiation of contracts, according to Plaintiffs’ expert, an athlete’s average career at Zuffa lasts 2 years and the median is 0.82 years. Ex. 49, Singer II ¶ 64 & Table 1. By contrast, for athletes who competed in at least one Zuffa bout, the total average career length in MMA overall is 8.7 years. Ex. 50, Topel II ¶¶ 39-40.

14. Multi-bout exclusive contracts enable Zuffa to have enough athletes available to compete in the numerous UFC events Zuffa promotes each year. As Zuffa’s corporate representative explained, [REDACTED]

[REDACTED] Ex. 48, Contracts Dep. 153:6-12; *see also id.* 97:23-98:10; [REDACTED] 243:24-244:13. Other Zuffa witnesses similarly testified to the importance of exclusive contracts to Zuffa’s operations. Ex. 9, Acquisitions Dep. 177:15-178:5; Ex. 8, Epstein Dep. 98:5-99:17; 103:6-105:7; Ex. 51, Shelby Dep. 120:1-16; Ex. 14, Mersch Dep. 104:19-25; Ex. 52, J. Silva Dep. 247:10-248:10, 120:20-121:20. Zuffa has had similar exclusivity provisions in its Promotional Agreements since it first purchased the UFC. Ex. 53 § 2(a).

15. At various points in time, Zuffa’s Promotional Agreements have included an exclusive negotiation period of [REDACTED]. Ex. 54 § 13.1; Ex. 55 § 12.1. The Promotional Agreements also normally have a right to match clause, which provides Zuffa the right to match a competing promoter’s offer for a short period of time after the expiration of the agreement. Ex. 47 §12.1; Ex. 55 §12.2. During the matching period, athletes can receive offers from other promoters. *Id.* Zuffa then has [REDACTED] to match or beat the competitor’s offer. *Id.*

16. Other MMA promoters have exclusivity provisions in their promotional agreements with athletes. Ex. 4, Topel I Ex. 5 ( [REDACTED] ); Ex. 56, Coker Dep. 180:20-181:3; Ex. 57, C. Silva Dep. 196:8-12; Ex. 58 (lists Strikeforce exclusive contracts); Ex. 59 ( [REDACTED] ); Ex. 60 ( [REDACTED] ); Ex. 61 ( [REDACTED] ).

17. Zuffa's Promotional Agreements grant Zuffa athletes' identity rights in connection with the UFC brand and UFC bouts. Ex. 47 Art. II. Athletes can and do profit from their identities if they do not use the UFC name, brand, and intellectual property. Ex. 62 ( [REDACTED] ); Ex. 63 ( [REDACTED] ); Ex. 1, Fertitta Dep. 246:4-247:9; Ex. 15, Batchvarova Dep. 27:15-23; Ex. 64 (Ronda Rousey's appearances and brand partners outside of UFC); Ex. 18, Le Dep. 16:8-18:17 (Plaintiff Le appeared in movies during and after UFC career); *id.* 119:19-25 (Le understood that when he wasn't wearing the UFC brand, he could appear in movies); Ex. 65, Quarry Dep. 239:25-241:14 (Plaintiff Quarry appeared on television shows MMA Uncensored and American Cage Fighter after UFC career); Ex. 22, Vera Dep. 241:6-242:16 (Plaintiff Vera appeared in movies and television commercials after UFC career); Ex. 66 (Plaintiff Fitch released documentary film during UFC career).

#### MMA Competition

18. Other MMA promotions compete with Zuffa to put on MMA events, including:
- Bellator, a promotion founded in 2008 and currently owned by Viacom, which according to its President Scott Coker "has steadfastly grown its market, signing numerous new athletes from the United States and abroad, commanding record attendance, and continuing to expand its television audience, with distribution in more than one hundred forty countries." Ex. 67, Coker Decl. ¶ 4; Ex. 56, Coker Dep. 173:20. In June 2018, Bellator announced a nine-figure deal to broadcast Bellator bouts on DAZN, the self-described "world's largest dedicated live sports streaming services." Ex. 68, Topel Supp. ¶ 2.

- 1 • Professional Fighters League (PFL), the successor to MMA promotion World  
2 Series of Fighting (WSOF), which was established in 2012. PFL is putting on a  
3 MMA tournament with six weight class champions each earning a \$1 million  
4 prize, with \$10 million in total compensation. Ex. 68, Topel Supp. ¶ 8. PFL  
5 purchased the fighting operations and event infrastructure of WSOF in early 2017.  
6 Ex. 69, “This is the Professional Fighters League.” When deposed in this case,  
7 Carlos Silva, PFL League President, was WSOF President of Business Operations.
- 8 • One Championship (One), founded in 2011 and the self-described “world’s largest  
9 martial arts organization” with a valuation approaching \$1 billion, Ex. 70, Singer I  
10 ¶ 128 n.350, and “a roster of blue-chip Fortune 500 sponsors, including Disney,  
11 Marvel, LG, Sony, Facebook, Haier, Kawasaki, L’Oreal, Casio, Bayer, and more.”  
12 Ex. 71, “About One.”
- 13 • Absolute Championship Berkut (ACB), a promotion established in 2014 that  
14 prides itself as “the world’s fastest growing MMA promotion.” Ex. 72, ACB  
15 Facebook post. Absolute Championship Berkut held 27 events in 2017, Ex. 73  
16 (list of ACB events), and has signed many former UFC athletes, including Thiago  
17 Silva, Pat Healy, Nam Phan, and Efrain Escudero. Ex. 74, Sherdog profiles.

18 19. During the Class Period, entrants to the MMA promotion business PFL, One, and ACB  
19 expanded output. One increased its output from 1 event its first year in 2011 to 16 events in  
20 2016; PFL increased its output from 1 event its first year in 2012 to 8 events in 2016; and ACB  
21 increased its output from 1 event its first year in 2012 to 22 events in 2016. Ex. 75 (annual  
22 events by promoter); Ex. 4, Topel I ¶ 192 & Ex. 23. Collectively, these promoters, along with  
23 Bellator, have increased the number of MMA events from 22 events in 2010 to 68 events in  
24 2016. Ex. 75; Ex. 4, Topel I ¶ 192 & Ex. 23.

25 20. New MMA promoters are continuing to emerge. For example, Golden Boy Promotions,  
26 a boxing promoter, recently signed former UFC champions Chuck Liddell and Tito Ortiz to  
27 headline its first MMA event on PPV later this year. Ex. 68, Topel Supp. ¶ 5. As one former  
28 UFC athlete put it, “the global market for MMA is huge” and the number of MMA companies  
“just keeps on growing.” Ex. 76, Ortiz Decl. ¶ 8.

21 MMA promoters have been able to access talented MMA athletes during the Class Period.  
Ex. 57, C. Silva Dep. 204:23-25 (affirming WSOF can sign MMA athletes from “a large talent  
pool”); Ex. 77, Knapp Dep. 226:9-12 (Invicta has been able to contract with elite MMA athletes);  
*id.* 220:17-20 (President of Invicta, when asked if UFC prevents her from signing athletes: “Heck

no”); Ex. 78, Aronson Dep. 26:3-28:8 (Aronson started MMA promotion because there were so many “incredibly talented” prospects); *id.* 52:23-25 (Titan FC athletes “were of the top level in the world and there was no promotion I wouldn’t put my guys up against”); *id.* 40:22-23; Ex. 56, Coker Dep. 273:8-11 (affirming that Bellator could go after a lot of fighters on the market); *id.* 272:5-8 (Bellator has some of the best featherweight athletes in the world); Ex. 79, Campbell Decl. ¶¶ 3-4, 9-11 (discussing free agents). From 2011 to 2016, more than 230 former UFC athletes competed for other promotions. Ex. 80, Blair Rep. ¶ 37, Fig. 1.

22. MMA promoters have successfully outbid Zuffa and contracted with athletes during the period where Zuffa had a right to match a competitor’s compensation. Ex. 8, Epstein Dep. 182:2-14 (Ryan Bader and Rory McDonald); Ex. 56, Coker Dep. 196:16-197:7 (Bellator has outbid Zuffa for “big fighters” including Rory McDonald and Gegard Mousasi); *id.* 248:15-25 (Benson Henderson); *id.* 274:9-13 (Bellator picked up 100% of the free agent MMA athletes it tried to sign); Ex. 79, Campbell Decl. ¶¶ 4, 7-11 (free agents); Ex. 81 (UFC declining to match Bellator offer to Josh Koscheck); Ex. 82 (UFC opts not to match Josh Thomson’s offer from Bellator); Ex. 52, J. Silva Dep. 193:21-23 (Quinton “Rampage” Jackson went to Bellator); Ex. 1, Fertitta Dep. 253:19-23 (same); Ex. 8, Epstein Dep. 183:8-13 (same); Ex. 83 (Phil Davis); Ex. 84 (Huerta).

23. Many of the former UFC athletes were highly-ranked at the time they signed with their new promoters. Nero Decl. ¶ 124; Ex. 4, Topel I ¶ 221 (Ryan Bader and Phil Davis 3rd and 4th-ranked light heavy-weights); Ex. 85, Kingsbury Dep. 192:23-193:8 (Phil Davis left the UFC and is an “elite level fighter”).

24. Between 2011 and 2016, 70 MMA athletes competed for UFC and later competed for Bellator, while 72 competed for Bellator and later UFC. Exs. 86 & 87.

25. No witness has testified that during the Class Period Zuffa prevented other MMA promoters from putting on live professional MMA bouts. Ex. 57, C. Silva Dep. 205:12-18 (UFC has not blocked WSOF from any inputs or done anything to impede WSOF’s ability to compete); Ex. 77, Knapp Dep. 222:5-11 (UFC has not done anything to harm Invicta’s ability to compete); Ex. 56, Coker Dep. 194:11-195:17 (describing Bellator events); *id.* 274:17-275:10 (describing



1 Bellator event with 2.1 million viewers); *id.* 280:14-17 (“Bellator is not a minor league”); *id.*  
 2 274:9-13 (Bellator picked up 100% of the free agent MMA athletes it tried to sign); Ex. 88, Hume  
 3 Decl. ¶ 4 ( [REDACTED]  
 4 [REDACTED]”); Ex. 78, Aronson Dep. 78:17-79:24 (describing broadcast deal with CBS and inclusion on  
 5 UFC’s Fight Pass to increase promotion of Titan’s events).

6 26. None of the Plaintiffs currently compete in bouts Zuffa promotes. CAC; Ex. 18, Le Dep.  
 7 22:10-17 (retired); Ex. 22, Vera Dep. 38:3-4; Ex. 89, Vazquez Dep. 172:6-174:17 (retired in  
 8 2013); Ex. 65, Quarry Dep. 62:3-13 (last fight in 2010); Ex. 90 (Fitch WSOF contract).

9 27. During the Class Period, named Plaintiffs Fitch and Brandon Vera have entered into  
 10 exclusive contracts to compete for other MMA promotions. Jon Fitch contracted with the World  
 11 Series of Fighting (now PFL) for a multi-bout exclusive promotional contract, and then in 2018,  
 12 he signed a promotional agreement to compete in Bellator bouts.<sup>2</sup> Ex. 90 (Fitch WSOF contract);  
 13 Ex. 60 (same). Brandon Vera currently competes for One under a multi-bout exclusive contract.  
 14 Ex. 59 (Vera One contract).

15 28. There is evidence that Zuffa and other MMA promoters compete for viewers with a  
 16 variety of sports entertainment programming. Ex. 1, Fertitta Dep. 66:24-69:13 (UFC is not only  
 17 “competing with other promoters and leagues in mixed martial arts but also other sports, the NFL,  
 18 the NBA, Major League Baseball. And certainly I always wanted to stay away from March  
 19 Madness. Wanted to stay away from boxing, major boxing events, primarily a Floyd Mayweather  
 20 fight, Manny Pacquiao fight.”); Ex. 8, Epstein Dep. 295:18-20 (“I mean, we’re competing against  
 21 the NBA finals right now. We’re competing against March Madness at times, NFL, Super  
 22 Bowl”); Ex. 57, C. Silva Dep. 203:9-204:6 (WSOF competing for TV viewers “with everything  
 23 else that people could do from 8:00 to 10:00 at night. Anything. Live sport event, theater,  
 24 television, cable, broadband, pay services, Amazon, Netflix”); Ex. 77, Knapp Dep. 116:10-25  
 25 (Invicta event competed against March Madness); Ex. 91, Hand Decl. ¶ 4 (loss of closed circuit  
 26 sales distribution during Stanley Cup Playoff, New Years’ Day college football and NCAA  
 27 \_\_\_\_\_

28 <sup>2</sup> “Jon Fitch signs with Bellator,” <https://www.youtube.com/watch?v=yGMocFO0rvw>.



March Madness); Ex. 10, Lawenda Decl. ¶ 5 (“From the standpoint of networks and advertisers, MMA is largely interchangeable” with other programming options like “major sports leagues, as well as extreme sports, poker, and adult animation such as The Simpsons and Family Guy.”).

#### Venues, Sponsors, And Broadcasters

29. During the Class Period, MMA promoters had access to venues. Ex. 4, Topel I ¶¶ 66 & Ex. 2 (examples between 2005-2016 of MMA promoters that have used venues in North America Zuffa booked); Ex. 57, Carlos Silva Dep. 176:16-25 (no trouble scheduling venues); Ex. 92 (chart showing from 2005-2015, 126 venues hosted Zuffa events, 76 only hosted one); Ex. 93 (recent Bellator events); Ex. 94 (recent PFL events). Plaintiffs’ experts did no analysis to suggest that suitable venues are not available to competing MMA promoters. Ex. 16, Singer Dep. I 260:2-21.

30. During the Class Period, MMA promoters had access to sponsors. Ex. 4, Topel I ¶¶ 67; Ex. 56, Coker Dep. 278:3-18 (Bellator President describes its marquee sponsors, Miller Lite, Monster Energy, and Dave & Busters); Ex. 57, C. Silva Dep. 188:15-21 (WSOF/PFL sponsors include Alienware, Miller Lite, Kawasaki, Auto Shopper, Ticket Galaxy, Kiswe, Fight.TV, Avion Tequila); *id.* 112:25-113:10 (UFC makes it easier for WSOF to get sponsors because “The sport’s bigger, more people know about MMA, more people want to play”); *id.* 190:7-9 (WSOF’s sponsorship revenue has increased over time). Plaintiffs’ experts did no analysis to suggest that suitable sponsors are not available to competing MMA promoters. Ex. 12, Singer Dep. II 552:2-12.

31. During the Class Period, MMA promoters had access to broadcasters. Ex. 4, Topel I ¶¶ 65, 70-73; Ex. 56, Coker Dep. 274:24-275:10 (describing Bellator’s event that topped 2.1 million viewers on Spike TV); Ex. 67, Coker Decl. ¶ 4 (Bellator has “distribution in more than one hundred forty countries”); Ex. 57, C. Silva Dep. 180:13-17 (broadcast relationship with NBC Sports); Ex. 77, Knapp Dep. 62:21-23 (broadcast distribution deal with UFC Fight Pass); *id.* 110:2-18; Ex. 78, Aronson Dep. 78:17-79:24 (Titan events broadcast on CBS and Fight Pass). Plaintiffs’ experts did no analysis to suggest that suitable broadcast outlets are not available to competing MMA promoters. Ex. 12, Singer Dep. II 552:14-23.

Plaintiffs' Experts Opinions

32. Plaintiffs' economist, Dr. Hal Singer, defines an output market as live MMA events in which participating athletes are in a relevant input market. Ex. 70, Singer I ¶ 115. According to Dr. Singer, MMA promoters are the sellers and their customers include viewers, cable networks, broadcast networks, and sponsors. *Id.* Dr. Singer admitted that he did not evaluate customer responses to a price increase for cable distributors, cable networks, or sponsors. Ex. 12, Singer Dep. II 552:2-23, 544:3-15.

33. Dr. Singer defines four input markets of "MMA Fighters": a Zuffa only market, a Tracked Market, a Ranked Market, and a Headliner market. Ex. 70, Singer I ¶¶ 95, 99.

34. The FightMetric database, which measures the Tracked Market, does not include data from all major MMA promoters. Ex. 95, Genauer Decl. ¶ 5. [REDACTED]

*Id.* ¶¶ 4-5. [REDACTED]

*Id.* ¶ 8.

35. Dr. Singer does not include in his Ranked market unranked athletes who compete for promoters with a ranked athlete. Ex. 70, Singer I ¶ 111 n.306. Nor does he include events from promoters who sometimes featured ranked athletes and sometimes did not. Ex. 96 (ranked market promoters' events with ranked and unranked athletes). Between 2011 and mid-2017, 2,122 athletes were ranked while competing for one of 861 different foreign promoters and later a promoter in Dr. Singer's Ranked market or vice versa. Exs. 97 & 98 (summaries of promoter switches and foreign promoters).

36. In the Ranked market, from 2011 to 2016, Zuffa had only 18.1% of total available athletes under contract, and Zuffa never had over 22% of the total athletes in Dr. Singer's Ranked market in any year. Ex. 99 (Zuffa's share of all ranked athletes 2011-2016).

37. Dr. Singer's regressions find a negative relationship between: his input of (1) the number of 30 month multi-bout, exclusive contracts—which Dr. Singer calls "foreclosure share," Ex. 70, Singer I ¶ 306; and his output of (2) the percentage of athlete compensation of total event

1 revenues (the athletes' "wage share"). *Id.* § III.D.1, Table 6, ¶ 306; Ex. 16, Singer Dep. I 39:1-3,  
 2 43:2-10. Wage share is the dependent variable in the regressions. Ex. 16, Singer Dep. I 105:4-  
 3 10. Dr. Singer did not look at whether Zuffa suppressed actual wages without controlling for  
 4 revenues. *Id.* 296:2-8. He has not run any models to establish injury or damages based on actual  
 5 compensation as opposed to wage share. *Id.* 98:19-100:10. His models when run with actual  
 6 wages do not show an injury. Ex. 4, Topel I ¶¶ 141, 146-49.

7 38. Dr. Singer never ran a regression to evaluate the impact of the so-called "sponsorship tax"  
 8 on overall athlete compensation. Ex. 16, Singer Dep. I 311:22-312:6.

9 39. Dr. Singer's comparison of Zuffa's wage share to that of Strikeforce and Bellator is a  
 10 comparison of athlete wage shares across firms. Ex. 16, Singer Dep. I 9:18-10:7. This does not  
 11 control for other variables in the same way that a regression model might. *Id.* 10:12-24.

## 12 LEGAL STANDARD

13 Summary judgment is appropriate when "a movant shows that there is no genuine dispute  
 14 as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.  
 15 56(a). To establish either monopolization or monopsonization<sup>3</sup> under Section 2 of the Sherman  
 16 Act, a plaintiff must prove three elements—that the defendant (i) possessed monopoly power in  
 17 the relevant markets; (ii) willfully acquired or maintained its monopoly power through  
 18 exclusionary conduct; and (iii) caused antitrust injury. *Am. Prof'l Testing Serv., Inc. v. Harcourt*  
 19 *Brace Jovanovich Legal & Prof'l Publications, Inc.*, 108 F.3d 1147, 1151 (9th Cir. 1997).  
 20 "Simply possessing monopoly power and charging monopoly prices does not violate § 2; rather,  
 21 the statute targets 'the willful acquisition or maintenance of that power as distinguished from  
 22 growth or development as a consequence of a superior product, business acumen, or historic  
 23 accident.'" *Pac. Bell Tel. Co. v. Linkline Commc'ns, Inc.*, 555 U.S. 438, 447–48 (2009).

24  
 25  
 26 <sup>3</sup> "Monopsony power is market power on the buy side of the market. As such, a monopsony is to  
 27 the buy side of the market what a monopoly is to the sell side and is sometimes colloquially  
 28 called a 'buyer's monopoly.'" *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549  
 U.S. 312, 320 (2007).

1 For the first element, a plaintiff must define a relevant product and geographic market.  
 2 *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2285 n.7 (2018) (“Amex”); *Tanaka v. Univ. of S. Cal.*,  
 3 252 F.3d 1059, 1063 (9th Cir. 2001). A plaintiff must then show monopoly power either directly  
 4 through evidence of “restricted output and supracompetitive prices,” *Theme Promotions, Inc. v.*  
 5 *News Am. Mktg. FSI*, 546 F.3d 991, 1001 (9th Cir. 2008), or indirectly through an analysis of  
 6 market share, barriers to entry, and other factors. *SmileCare Dental Grp. v. Delta Dental Plan of*  
 7 *California, Inc.*, 88 F.3d 780, 783 n.2 (9th Cir. 1996).

8 For the second element, the “test of willful maintenance or acquisition of monopoly power  
 9 is whether the acts complained of unreasonably restrict competition. The Sherman Act is not  
 10 directed ‘against conduct which is competitive, even severely so, but against conduct which  
 11 unfairly tends to destroy competition itself.’” *Eastman v. Quest Diagnostics Inc.*, 724 F. App’x  
 12 556, 557 (9th Cir. 2018) (citation omitted). “To safeguard the incentive to innovate, the  
 13 possession of monopoly power will not be found unlawful unless it is accompanied by an element  
 14 of anticompetitive conduct.” *Trinko*, 540 U.S. at 407. “When a legitimate business justification  
 15 supports a monopolist’s exclusionary conduct, that conduct does not violate § 2 of the Sherman  
 16 Act.” *Image Tech. Servs., Inc. v. Eastman Kodak Co.*, 125 F.3d 1195, 1212 (9th Cir. 1997).

17 To prove causal antitrust injury, a plaintiff must show “(1) unlawful conduct, (2) causing  
 18 an injury to the plaintiff, (3) that flows from that which makes the conduct unlawful, and (4) that  
 19 is of the type the antitrust laws were intended to prevent.” *Am. Ad. Mgmt. Inc. v. Gen. Tel. Co. of*  
 20 *Cal.*, 190 F.3d 1051, 1055 (9th Cir. 1990). A plaintiff must also establish “in a reasonable  
 21 manner the link between the injury suffered and the illegal practices of the defendant.” *Magnetar*  
 22 *Techs. Corp. v. Intamin, Ltd.*, 801 F.3d 1150, 1160 (9th Cir. 2015). The injury cannot be caused  
 23 by legal conduct or market forces, “as it is inimical to the antitrust laws to award damages for  
 24 losses stemming from acts that do not hurt competition.” *Rebel Oil Co. v. Atlantic Richfield Co.*,  
 25 51 F.3d 1421, 1433 (9th Cir. 1995).

## ARGUMENT

Zuffa previously filed *Daubert* motions seeking to exclude testimony from Plaintiffs’ two economists, Dr. Singer and Dr. Andrew Zimbalist, as well as its accountant Guy Davis. ECF Nos. 522, 524, 517. To the extent the Court grants those motions, Plaintiffs will be left with no evidence of market definition, causation, or damages. Without evidence of these essential elements of Plaintiffs’ claims, summary judgment must be granted. *City of Vernon v. S. Cal. Edison Co.*, 955 F.2d 1361, 1371 (9th Cir. 1992) (“because no damages had been properly shown, there was an independent reason to grant summary judgment on various claims . . . Indeed, the deficiencies in that study undermine Vernon’s whole case”); *accord McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 808 (9th Cir. 1988).

Even apart from *Daubert*, Zuffa is entitled to summary judgment on Plaintiffs’ monopolization and monopsonization claims. Plaintiffs’ Complaint—premised on a claim of monopsonization of MMA athletes combined with monopolization of the market for the promotion of elite professional MMA events—alleges that together this power has made Zuffa the only purchaser of “Elite MMA Fighter services,” which allowed Zuffa to maintain and exert monopsony power. CAC ¶¶ 5, 108. The record evidence has established that competing MMA promoters have access to the inputs needed to compete, SUF ¶¶ 21-31, which undermines the foundation of Plaintiffs’ monopsony claim—that Zuffa is the only purchaser of athletes’ services because it is the only promoter who can access the necessary inputs to compete. CAC ¶¶ 5, 108. By the time of class certification and their expert reports, Plaintiffs accordingly redefined their alleged “Scheme” and omitted any monopoly claims. No longer defined by the operative Complaint, Plaintiffs’ claims instead are free floating allegations strung through their class certification briefing and their opposition to *Daubert*. Without a monopolization, or combined monopolization and monopsonization claim, Plaintiffs’ monopsonization claim becomes implausible. As this Court noted in its ruling on the motion to dismiss, the Ninth Circuit has explained that “While it is theoretically possible to have a middleman who is a monopolist upstream but not downstream, this is a somewhat counterintuitive scenario.” *Le*, 216 F. Supp. 3d at 1163 (*quoting Syufy*, 903 F.2d at 663). In *Syufy*, the Ninth Circuit asked the question, why, if a

1 company had market power, would it take advantage of that power in one market where there was  
 2 a monopsony and not in the market where there was a monopoly. *Id.* That is now the question in  
 3 this case. “The answers to these questions are significant because, like all antitrust cases, this one  
 4 must make economic sense.” *Id.* Summary judgment is required here because Plaintiffs’ claims  
 5 make no economic sense and instead are antithetical to principles of free competition.

6 I. Plaintiffs Have Not Defined A Legally Sufficient Input Or Output Market Because They  
 7 Attempt To Define The Market By The Athletes In The Market, And Not The MMA  
 8 Promoters Which Compete.

9 Vertical restraints like the challenged conduct between Zuffa and athletes “often pose no  
 10 risk to competition unless the entity imposing them has market power, which cannot be evaluated  
 11 unless the Court first defines the relevant market.” *Amex*, 138 S. Ct. at 2285 n.7. “[W]ithout a  
 12 properly-defined market, it is impossible to accurately determine Defendants’ market share.”  
 13 *Golden Boy Promotions LLC v. Haymon*, 2017 WL 460736, at \*12 (C.D. Cal. Jan. 26, 2017). As  
 14 a result, summary judgment is appropriate where plaintiffs fail to proffer sufficient evidence to  
 15 permit a reasonable jury to adopt plaintiffs’ proposed market definition. *Rebel Oil*, 51 F.3d at  
 16 1435; *Golden Boy*, 2017 WL 460736, at \*10; *In re Live Concert Antitrust Litig.*, 863 F. Supp. 2d  
 17 966, 1000 (C.D. Cal. 2012). Plaintiffs have not met their burden of proving an input market of  
 18 buyers (where Zuffa competes with other promoters to acquire athletes’ services) or an output  
 19 market of sellers (where Zuffa competes to offer sports entertainment to viewers).

20 A properly defined market must include all reasonable substitutes from a consumer’s (or  
 21 athlete’s) perspective. *Rebel Oil*, 51 F.3d at 1435. Here, the product market of buyers or sellers  
 22 is the available MMA promoters. Ex. 12, Singer Dep. II 531:15-24 (promoters are “buyers in that  
 23 market”). The accepted test for market definition is whether “a significant number” of customers  
 24 (or athletes in the input market) would turn to other sellers (or buyers/MMA promoters in the  
 25 input market) “in the event of a small but significant non-transitory increase [or decrease in the  
 26 input market] in price [SSNIP, or SSNDP] by a hypothetical monopolist.” *Golden Boy*, 2017 WL  
 27 460736, at \*11; *St. Alphonsus Med. Ctr-Nampa Inc. v. St. Luke’s Health Sys., Ltd.*, 778 F.3d 775,  
 28 784 (9th Cir. 2015); Ex. 100, U.S. Dep’t of Justice & Fed. Trade Comm’n, Horizontal Merger



Guidelines (2010), at 9. Plaintiffs and their economist Dr. Hal Singer have not sought to define a market of sellers in the output market or buyers in the input market and instead have improperly tried to define the market by identifying athletes who should be included in the market. *E.g. Live Concert*, 863 F. Supp. 2d at 987 (rejecting market definition where expert “never meaningfully considered any narrower definition of the market, nor did he ever ‘expand that definition until all reasonable substitutes [were] included’”). The Court has no obligation “to accept uncritically” market definitions “that coincidentally fit plaintiff’s precise circumstances.” *Golden Boy*, 2017 WL 460736, at \*10 (quoting *It’s My Party, Inc. v. Live Nation, Inc.*, 811 F.3d 676, 683 (4th Cir. 2016)). Dr. Singer’s market definition is tautological—his postulated market (promoters who feature his select groups of athletes) is the same as his final market definition.

In their Complaint that survived the motion to dismiss, Plaintiffs initially sought to define the relevant markets as MMA promoters who featured “elite” fighters. *Le*, 216 F. Supp. 3d at 1165-67; CAC ¶¶ 55-58. Plaintiffs represented to the Court that “the distinction between the ‘Elite’ designation’ and non-Elite fighters . . . is well understood in the industry.” *Le v. Zuffa*, Case No. 5:14-cv-05484-EJD, ECF. No. 71 at 5 (N.D. Cal. Apr. 10, 2015). Discovery has since revealed that even Plaintiffs cannot agree what constitutes an “elite” fighter. Ex. 65, Quarry Dep. 272:19-24; Ex. 89, Vazquez Dep. 85:16-86:18; Ex. 17, Fitch Dep. 36:8-37:19; Ex. 22, Vera Dep. 228:25-229:4; Ex. 85, Kingsbury Dep. 210:5-8.

Plaintiffs’ expert Dr. Singer never uses the term “elite” to define the relevant input or output markets, and Plaintiffs have also abandoned this part of their Complaint. Ex. 70, Singer I ¶¶ 1, 115. Singer instead identifies four hypothetical markets, each of which identifies a group of athletes that takes the place of Plaintiffs’ “elite fighter” concept. Those four groups are: (1) “Zuffa Only” fighters, (2) “Tracked” fighters—athletes who the company FightMetric tracks, (3) “Ranked” fighters—athletes who the company FightMatrix.com ranks who competed in an event in North America or for the promoter One, and (4) “Headliner” fighters—a “submarket” of the Ranked market that includes only the top fifteen FightMatrix ranked fighters by division. *Id.* ¶¶ 99, 104.

1           A.     Plaintiffs' Evidence Does Not Define An Input Market.

2           Dr. Singer assumes that only promoters that currently feature athletes in one of these  
3 groups are in his input markets. Ex 70, Singer I ¶ 99. He does not identify or assess promoters  
4 that do not currently feature his athletes and whether they compete with promoters within the  
5 defined markets. Ex. 16, Singer Dep. I 54:7-14. Here, literally hundreds of promoters switch  
6 from events with FightMatrix ranked athletes to ones without. Of the 793 promoters who hosted  
7 an MMA event with at least one ranked athlete in North America during the Class Period, 441 of  
8 these promoters (55%) also promoted events without any ranked athletes. Ex. 96. This non-  
9 approach to market definition would be the same if Dr. Singer defined a market of office software  
10 without assessing who sold such software or who sold reasonable substitutes for such software.  
11 Dr. Singer has not even attempted to define a market using the accepted SSNIP test because he  
12 has not defined buying promoters to whom a price decrease by a monopsonist would cause a shift  
13 in business. *Live Concert*, 863 F. Supp. 2d at 987; *Golden Boy*, 2017 WL 460736, at \*11. The  
14 court in *Golden Boy* specifically rejected this approach to market definition, concluding that it  
15 offered “no explanation why managers of non-Championship-Caliber Boxers would not be in the  
16 same economic market . . . particularly in light of the fact that a non-Championship-Caliber  
17 Boxer can become a Championship-Caliber Boxer as the result of a single fight.” *Golden Boy*,  
18 2017 WL 460736, at \*11.

19           While Dr. Singer said he analyzed the relevant input market using SSNIP methodology,  
20 he never articulated what he did to assess the available rival promoters or how athletes would  
21 respond to a price decrease. Ex. 12, Singer Dep. II 529:23-530:17, 534:14-535:13. The SSNIP  
22 methodology requires an analysis of the qualifications of each firm that is excluded from the  
23 market, *Golden Boy*, 2017 WL 460736, at \*11 (product market for “Championship-Caliber  
24 Boxers” is not sustainable where expert fails “to analyze the qualifications or backgrounds of the  
25 current managers in the market”), but Dr. Singer merely uses the ranking data combined with his  
26 own subjective analysis to include or exclude athletes rather than promoters.

27           Moreover, the flaws with his selection criteria include:  
28



- 1 • *Zuffa Only Market*. Dr. Singer concluded that one relevant market includes only Zuffa  
athletes based on his belief that he can rely on regression results he agrees with to  
2 define a market. Singer-Zimbalist Daubert Opp., ECF No. 534 at 45 n.81. A  
regression showing impact in a relevant market is only valid if the outcome is not  
3 predetermined and the market has been correctly defined. The undisputed record  
refutes a Zuffa-only market because UFC faces competition from promoters for  
4 athletes and because athletes elect to go to rival promoters. SUF ¶¶ 21-27.
- 5 • *Tracked Market*. The FightMetric database does not include data from all major MMA  
6 promoters. SUF ¶ 34. [REDACTED] *Id.*; Ex.  
7 95, Genauer Decl. ¶¶ 8-9. [REDACTED] *Id.* ¶¶ 4-5.
- 8 • *Ranked And Headliner Markets*. Dr. Singer selectively excludes from the Ranked and  
9 Headliner markets all athletes with foreign promoters except those competing for One  
10 (where Plaintiff Brandon Vera fought during the Class Period). Ex. 70, Singer I ¶ 110.  
However, of the 6,009 ranked athletes in Singer's Ranked market between 2011 and  
11 mid-2017, 2,122 were ranked while competing for one of 861 different foreign  
promoters and later a promoter in Singer's Ranked market or vice versa. SUF ¶ 35.

12 B. Plaintiffs' Evidence Does Not Define An Output Market.

13 Plaintiffs have abandoned their monopolization claim, but that claim should be dismissed  
14 separately for a similar failure to attempt a proper market definition. Dr. Singer defines his  
15 output market using the same athletes he identifies in the input markets, Ex. 70, Singer I ¶ 115,  
16 but he defines the customers in the output market to include "viewers, cable networks, broadcast  
17 networks, and sponsors," *id.* In his deposition, Dr. Singer admitted that he never assessed the  
18 extent to which some customers in his proposed market would react to a price increase. SUF  
19 ¶ 32. Any proper market definition requires considering the reasonable substitutes. *Paladin*  
20 *Assocs, Inc. v. Montana Power Co.*, 328 F.3d 1145, 1163 (9th Cir. 2003). Here, the record  
21 includes testimony from MMA promoters and a broadcast executive that MMA events compete  
22 with a broad spectrum of sports entertainment, SUF ¶ 28, which Dr. Singer does not analyze.

23 Dr. Singer also combines viewing events at a live venue with viewing events on PPV or  
24 broadcast television, while concluding the geographic market is North America. Ex. 70, Singer I  
25 ¶¶ 115, 121. But it is erroneous to assert a national geographic market for events requiring  
26 attendance at a local venue. *E.g. Heerwagen v. Clear Channel Commc'ns*, 435 F.3d 219, 228 (2d  
27 Cir. 2006) ("a higher price in Boston will not lead Boston purchasers to buy tickets for the same  
28

concert held in New York”); Ex. 16, Singer Dep. I 289:15-290:5 (confirming he has not evaluated the substitutability between Live MMA attendance and PPV events but “I imagine for someone who lives very far from the venue where the live event is staged, they would not be considered reasonably close substitutes”).

II. Zuffa is Entitled to Summary Judgment on Plaintiffs’ Monopsonization Claim.

A. Undisputed Competition Shows That The UFC Lacks Monopsony Power.

Plaintiffs’ case proceeds on the theory that Zuffa is the dominant purchaser of elite MMA athlete services, which allowed Zuffa to maintain and exert monopsony power. CAC ¶ 108. The record evidence establishing that competing MMA promoters have access to the inputs needed to compete, SUF ¶¶ 21-31, refutes Plaintiffs’ monopsony claim that Zuffa is a monopsony purchaser of athletes’ services. CAC ¶ 10.

Zuffa has many significant competitors during the Class Period, none of whom believe they are “fringe” MMA promoters or the “minor league,” and who all deny that Zuffa impaired their ability to compete. SUF ¶¶ 21-25. Bellator is owned by Viacom and televised on Paramount Network (previously known as Spike TV). SUF ¶¶ 18, 31. Bellator recently signed a nine-figure deal with streaming service DAZN to produce 22 annual events. SUF ¶ 18. Its President Scott Coker testified that “Bellator is not in a minor league.” SUF ¶ 25. PFL has an exclusive distribution partnership with NBC Sports. SUF ¶ 31. PFL President Carlos Silva likewise testified that PFL has continued to compete with Zuffa unimpeded, testifying that Zuffa has not “blocked the World Series of Fighting from any inputs necessary to put on successful MMA events.” SUF ¶ 25. One Championship is “Asia’s largest global sports media property” and broadcasts to 1.7 billion potential viewers across 138 countries. Ex. 71, “About One.” Matt Hume, Vice-President of Operations and Competition for One Championship’s parent company, stated that “[REDACTED]” SUF ¶ 25; Ex. 88, Hume Decl. ¶ 4.

1 Zuffa's competitors have access to numerous professional MMA athletes, including those  
 2 who previously competed for UFC. *SUF* ¶¶ 21-27. As Zuffa's own competitors have explained,  
 3 they compete vigorously with UFC to sign MMA athletes and have not been prevented access to  
 4 those athletes. *Id.*; Ex. 56, Coker Dep. 270:12-19 ("there's not going to be a free agent fighter  
 5 that Bellator can't afford or have access to"); Ex. 57, C. Silva Dep. 112:21-24 (UFC does not  
 6 make it difficult for WSOF/PFL to attract talent); Ex. 77, Knapp Dep. 220:4-16; Ex. 88, Hume  
 7 Decl. ¶ 4. Also, a substantial number of athletes move among promoters, including from the UFC  
 8 to another promoter or from another promoter to the UFC. Between 2011 and 2016, 70 MMA  
 9 athletes competed for UFC who later competed for Bellator, while 72 competed for Bellator and  
 10 later the UFC. *SUF* ¶ 24.

11 **B. Plaintiffs Lack Evidence Of Monopsony Power**

12 A plaintiff can provide "direct evidence of the injurious exercise of market power" if it  
 13 puts forward "evidence of restricted output and supracompetitive prices." *Rebel Oil*, 51 F.3d at  
 14 1434; *see also Amex*, 138 S. Ct. at 2288 ("Market power is the ability to raise price profitably by  
 15 *restricting output.*" (citing *Areeda & Hovenkamp* § 5.01)); *In re Beef Antitrust Litig.*, 907 F.2d  
 16 510, 516 (5th Cir.). Plaintiffs have failed to provide evidence of monopsony power, either  
 17 through direct or circumstantial evidence.

18 **1. There Is No Direct Evidence Of Lower Compensation.**

19 **a. Impact To Wage Share Is Not Evidence Of A Price Decrease.**

20 Plaintiffs contend that Dr. Singer's regression constitutes direct evidence of Zuffa's  
 21 monopsony power. According to Plaintiffs, Dr. Singer's regression shows that "as the share of  
 22 Fighters (key inputs to an MMA promotion) foreclosed by Zuffa increases with 30 month or more  
 23 contracts, Zuffa is able to pay Fighters a lower share of its event revenues" (i.e., "wage share").  
 24 Ex. 70, Singer I ¶ 143. Even accepting that Dr. Singer's regression could prove impact to wage  
 25 share from foreclosure of a market (it does not), a plaintiff using direct evidence must show an  
 26 impact on compensation. *Rebel Oil*, 51 F.3d at 1434; *Le*, 216 F. Supp.3d at 1168 (Plaintiffs  
 27 allege Zuffa's monopsony power "artificially suppressed compensation").  
 28

1 An impact to wage share is not equivalent to an impact on compensation because wage  
2 share can decline even as athlete compensation rises or stays the same. If an athlete is paid  
3 \$100,000 at two events, one event which grosses \$500,000 and one which grosses \$1,000,000, the  
4 athlete receives the same compensation for both events but wage share declines from 20% to 10%  
5 based on the larger event revenue. Wage share may be high, and actual wages low, when a  
6 promotion fails and earns minimal revenue. Wage share also *will* decline for successful events if,  
7 with everything else the same, Zuffa engages in procompetitive efforts to enhance its event  
8 revenues, such as increasing the amount or effectiveness of promotion, improving the quality of  
9 its event production and television broadcast, making other brand investments, and countless  
10 other activities that businesses regularly engage in to increase revenues.

11 Plaintiffs have not evaluated the effect of the challenged conduct on actual compensation  
12 levels. SUF ¶ 37. Undisputed evidence shows that actual compensation paid to Zuffa athletes  
13 rose during the Class Period. SUF ¶ 8. In addition, when a competitor is able to charge similarly  
14 high prices to those charged by an alleged monopolist, allegations that the alleged monopolist's  
15 prices are artificially high are insufficient to prove supracompetitive prices. *Dominick v.*  
16 *Collectors Universe, Inc.*, 2012 WL 6618616, at \*4 (C.D. Cal. Dec. 18, 2012). Record evidence  
17 shows that on average Zuffa's compensation is higher than that of its competitors. SUF ¶ 9.

18 The Supreme Court has warned courts about adopting an approach that "requires antitrust  
19 courts to act as central planners, identifying the proper price, quantity, and other terms of dealing  
20 – a role for which they are ill suited." *Trinko*, 540 U.S. at 408. Precedent cautions prudence "to  
21 avoid constructions of § 2 which might chill competition, rather than foster it." *Am. Prof'l*, 108  
22 F.3d at 1151 (citation omitted). Different firms in a market have no reason to allocate *the*  
23 *percentage* of its revenues in similar ways when the firms are of a different size or have different  
24 management opinions, different business models, or different strategic goals. Minimum or  
25 absolute shares of revenue that must be allocated to one specific group of labor (Plaintiffs' wage  
26 share ignores the non-athletes who work for Zuffa), or other costs, put the courts in the  
27 unprecedented position of regulating the operation of U.S. businesses. *Syufy*, 903 F.2d at 663-64  
28

1 (“It is a simple but important truth, therefore, that our antitrust laws are designed to protect the  
 2 integrity of the market system . . . competition, not government intervention, is the touchstone of  
 3 a healthy, vigorous economy”). An antitrust rule based on wage or cost share would strip a  
 4 business of the power to make independent decisions about how to invest in inputs for the service.  
 5 Making wage share a measure of anticompetitive conduct or injury would have the practical  
 6 effect of stifling companies’ innovation and investments for fear of incurring treble damages  
 7 liability based on a lower than average wage share.

8 Plaintiffs ask this Court to ignore the actual compensation paid to athletes and instead to  
 9 find that athletes have been injured if Zuffa does not pay a designated (and constant) percentage  
 10 of event revenue to athletes at every event (in essence, the “fair” wage share). ECF No. 518 at 14  
 11 (“[REDACTED]”). This  
 12 wage share theory invites this Court to cast aside binding precedent and step into the role of  
 13 central planner, relying on a brand new theory of antitrust liability that no Court has previously  
 14 endorsed. The Court should decline this invitation.

15 For this reason, Plaintiffs are also unable to show antitrust injury, which requires a  
 16 plaintiff to “prove that his loss flows from an anticompetitive aspect or effect of defendant’s  
 17 behavior, since it is inimical to the antitrust laws to award damages for losses stemming from acts  
 18 that do not harm competition.” *Rebel Oil*, 51 F.3d at 1433 (citing *Atlantic Richfield Co. v. USA*  
 19 *Petroleum, Inc.*, 495 U.S. 328, 334 (1990)). Here, Plaintiffs cannot show that a reduction in wage  
 20 share was the result of any exertion of monopsony power as opposed to procompetitive revenue-  
 21 generating or efficiency-enhancing investments.

22 b. Zuffa’s Purportedly Lower Wage Share Than Strikeforce Or  
 23 Bellator Is Not Evidence Of Monopsony Power.

24 To further illustrate the flaws with the wage share theory, Plaintiffs argue that Zuffa’s  
 25 purported payment of a smaller share of its revenue to athletes than Strikeforce and Bellator is  
 26 direct evidence of Zuffa’s monopsony power. Ex. 70, Singer I ¶ 190. It is not.

27 Plaintiffs assert that Strikeforce paid about [REDACTED] of its event revenue to athletes, while  
 28 Bellator pays approximately [REDACTED]. *Id.* Plaintiffs conclude without any further analysis that “the

Challenged Conduct suppressed Fighter compensation below competitive levels.” *Id.* ¶ 188. Dr. Singer acknowledged that his assessment is a simple comparison between wage shares, but does not “control for other variables in the same way that a regression model might.” Ex. 16, Singer Dep. I 10:17-24. Controlling for other factors is critical because a high wage share is as consistent with a failing promotion as an appropriate level of compensation. Ex. 101 ( [REDACTED] [REDACTED] ).

c. The So-Called “Sponsorship Tax” Does Not Constitute Direct Evidence Of Harm To Compensation.

Plaintiffs purport to offer a “natural experiment” of Zuffa’s ability to profitably restrict athlete compensation through the imposition of a so-called “sponsorship tax”—a program that required certain categories of sponsors to pay a brand-affiliation fee to appear in UFC events as athletes’ sponsor. Ex. 70, Singer I ¶¶ 191-92. But Plaintiffs’ “experiment” is faulty. Plaintiffs’ experts never isolate the impact of the brand-affiliation fee on total athlete compensation given the many other factors that influence athlete compensation, including rising compensation throughout the Class Period for participation in UFC bouts. SUF ¶¶ 8, 39. Even if Zuffa’s implementation of the brand-affiliation fee reduced athletes’ *sponsorship* compensation, Plaintiffs still have not demonstrated that a change to sponsorship compensation impacted athletes’ overall compensation, much less reduced their compensation below a competitive level.

2. Plaintiffs Have Not Shown a Restriction in Output for Athlete Services.

Direct evidence of market power in this monopsony case, in addition to a reduction in athlete compensation, requires proof of a restriction on output. *Rebel Oil*, 51 F.3d at 1434. Instructively, the Fifth Circuit has explained that if a defendant “had monopsony power, it would take illegal advantage of that situation by reducing its purchases of fed cattle in order to reduce its costs and make a higher profit on each head of cattle processed.” *In re Beef*, 907 F.2d at 516. That court upheld the district court’s grant of summary judgment because the plaintiff did not show that defendant “ever significantly reduced its purchases of fed cattle or its output of processed beef.” *Id.* Plaintiffs claim here is similarly deficient. Plaintiffs offer no evidence that

1 Zuffa has reduced its purchases of athlete services. Rather Plaintiffs claim that Zuffa maintains  
 2 an excess supply of athletes. *Infra* II.C.1.

3 3. Plaintiffs Have Not Shown Circumstantial Evidence Of Market Power.

4 “To demonstrate market power circumstantially, a plaintiff must: (1) define the relevant  
 5 market, (2) show that the defendant owns a dominant share of that market, and (3) show that there  
 6 are significant barriers to entry and show that existing competitors lack the capacity to increase  
 7 their output in the short run.” *Rebel Oil*, 51 F.3d at 1434. As discussed above, Plaintiffs cannot  
 8 meet the threshold requirement of proving a relevant antitrust market. *See* Section I.<sup>4</sup>

9 Plaintiffs also cannot show the last requirement, that the market has high barriers to entry.  
 10 “A § 2 plaintiff, establishing monopoly power by circumstantial evidence, must establish more  
 11 than just market share. Even a 100% monopolist may not exploit its monopoly power in a market  
 12 without entry barriers.” *Image Tech*, 125 F.3d 1195, 1208. “To justify a finding that a defendant  
 13 has the power to control prices, entry barriers must be significant—they must be capable of  
 14 constraining the normal operation of the market to the extent that the problem is unlikely to be  
 15 self-correcting.” *Rebel Oil*, 51 F.3d at 1439. Where competitors can enter the market and expand  
 16 output, there are no barriers to entry. *Id.* at 1441 (“evidence of past output expansion may be  
 17 used as a surrogate. If there is undisputed evidence indicating that competitors have expanded  
 18 output in the recent past, or have the ability to expand output in the future, summary disposition  
 19 may be appropriate”; *Syufy*, 903 F.2d at 664 (“A high market share, though it may ordinarily raise  
 20 an inference of monopoly power, will not do so in a market with low entry barriers”).

21 During the Class Period, new MMA promoters entered the market and the existing  
 22 promoters expanded. PFL, One Championship, and Absolute Championship Berkut all entered  
 23 the market during the Class Period and expanded output. *SUF* ¶ 19-20; *Ex. 4*, *Topel I* *Ex. 23*.  
 24 The UFC’s largest domestic competitor, Bellator, expanded its output from 10 events in 2009 to

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25 <sup>4</sup> As explained in Zuffa’s *Daubert* motion, Dr. Singer’s calculation of Zuffa’s share of the input  
 26 market (athlete services) is illogical and weights athletes in the market by event revenue rather  
 27 than counting the number of athletes Zuffa has under contract. *ECF No. 524*; *Ex. 70*, *Singer I* ¶  
 28 128. As a result, the same athlete could represent a different share of the input market when that  
 athlete switches from Bellator to, for example, Zuffa.



1 averaging over 20 during the Class Period. Ex. 4, Topel I Ex. 23. Moreover, other sports  
 2 entertainment organizations have entered MMA, including transitioning from other combat sports  
 3 like boxing promoter Golden Boy Promotions. SUF ¶ 20.

4 C. Zuffa Did Not Engage In Exclusionary Anticompetitive Conduct.

5 The second required element to prove monopsonization is whether the defendant  
 6 “willfully acquired or maintained” such monopsony power by “engaging in predatory or  
 7 anticompetitive conduct designed to destroy competition.” *The Movie 1 & 2 v. United Artists*  
 8 *Commc’ns, Inc.*, 909 F.2d 1245, 1255 (9th Cir. 1990). Whether the challenged conduct is viewed  
 9 collectively or individually, Plaintiffs have not presented a genuine issue of material fact that  
 10 would allow a reasonable jury to find they made such a showing.

11 1. Zuffa Was Not Engaged In Predatory Hiring.

12 Plaintiffs contend that “Zuffa has restricted the supply of Fighter services by consistently  
 13 maintaining significantly more Fighters under contract than it could use,” Ex. 70, Singer I ¶ 145,  
 14 and as a result, other MMA promoters “do not have access to the Elite Professional MMA  
 15 Fighters necessary to sustain and grow a profitable rival promotion company.” CAC ¶ 109.

16 This type of antitrust claim is called predatory hiring. “Unlawful predatory hiring occurs  
 17 when talent is acquired not for purposes of using that talent but for purposes of denying it to a  
 18 competitor.” *Universal Analytics, Inc. v. MacNeal-Schwendler Corp.*, 914 F.2d 1256, 1258 (9th  
 19 Cir. 1990). To prove a predatory hiring claim, a plaintiff must demonstrate either (1) the hiring  
 20 “harm[ed] the competition without helping the monopolist or (2) a “clear nonuse in fact.”  
 21 *Universal Analytics*, 914 F.2d at 1258; *Am. Prof’l.*, 108 F.3d at 1153.<sup>5</sup> Courts are “rightly

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23 <sup>5</sup> *Taylor Pub. Co. v. Jostens, Inc.*, 216 F.3d 465, 480 (5th Cir. 2000) (affirming judgment as a  
 24 matter of law where “Jostens hired [talent] precisely because it believed they would increase its  
 25 business”); *Midwest Radio Co. v. Forum Pub. Co.*, 942 F.2d 1294, 1297–98 (8th Cir. 1991)  
 26 (affirming summary judgment where talent hired away from competitor were used); *Wichita*  
 27 *Clinic, P.A. v. Columbia/HCA Healthcare Corp.*, 45 F. Supp. 2d 1164, 1196 (D. Kan. 1999)  
 28 (granting summary judgment on antitrust claims where “authority clearly indicates that claims of  
 predatory hiring should be restricted to cases in which the plaintiff can demonstrate either nonuse  
 of the employee or a proven intent to hire for the sole purpose of denying the employee to the  
 plaintiff” and plaintiff failed to provide any evidence of either).



1 cautious in imposing antitrust liability for a firm’s hiring practices” and “have examined more  
2 closely claims of anticompetitive hiring than other forms of anticompetitive conduct.” *Total*  
3 *Renal Care, Inc. v. W. Nephrology & Metabolic Bone Disease, P.C.*, 2009 WL 2596493, at \*12  
4 (D. Colo. Aug. 21, 2009) (citation omitted).

5 Plaintiffs’ predatory hiring claim does not meet either prong of the *Universal Analytics*  
6 test. First, there is no evidence that Zuffa’s sole intent in hiring hundreds of athletes over the  
7 putative Class Period was to keep them away from competitors. Plaintiffs can only identify two  
8 athletes—Gilbert Melendez and Antonio Rogerio Nogueira—with whom Zuffa allegedly  
9 contracted for the purpose of preventing those athletes from signing with a competitor. Ex. 70,  
10 Singer I ¶¶ 162 n.421, 194 n.481. Zuffa’s then CEO Lorenzo Fertitta testified [REDACTED]  
11 [REDACTED]. Ex. 1, Fertitta Dep. 290:6-8. Nogueira  
12 went on to compete in four UFC events.<sup>6</sup> Even if Plaintiffs’ allegations about these two athletes  
13 were accurate (they are not), these isolated examples fall well short of showing the “continued  
14 pattern” of predatory hiring necessary to sustain their monopsony claim. *Am. Prof’l*, 108 F.3d at  
15 1153.

16 It is implausible that Zuffa signed athletes solely to keep them away from competitors and  
17 not to help put on UFC events. Plaintiffs even admit that “ongoing access to a deep pool of  
18 talented Fighters is a critical input to the ongoing success of an MMA promotion.” Ex. 70, Singer  
19 I ¶ 158. Zuffa witnesses have testified to the same. SUF ¶ 14. Zuffa—like any other MMA  
20 promotion—has every incentive to scout and sign talented athletes to drive the success of their  
21 business. Because MMA athletes are important to Zuffa’s business, it is neither predatory hiring  
22 nor an antitrust violation to sign them. *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834,  
23 855–57 (7th Cir. 2011) (affirming summary judgment where given the competitive importance of  
24 physician groups, “It is not troubling, then, that the Hospital made an extraordinary effort to  
25 retain these physicians”).

26  
27  
28 <sup>6</sup> Ex. 102, Antonio Rogerio Nogueira Sherdog profile.

Furthermore, Plaintiffs have not alleged, much less proven with evidence, that Zuffa signed athletes who did not compete in UFC events. It is undisputed that Zuffa increased the number of its events during the putative Class Period. *SUF* ¶ 7. Plaintiffs' only allegation related to supposed nonuse is that Zuffa caused "forced periods of inactivity," also known as "benching." Plaintiffs have identified three athletes who Zuffa allegedly "benched," only one of which occurred during the putative Class Period: Andrei Arlovski in 2008, Roger Huerta (likely in 2009), and [REDACTED] in 2015. *Ex. 70*, *Singer I* ¶ 164 n.483; *Ex. 17*, *Fitch Dep.* 110:25-111:10. As for the allegation related to [REDACTED] Zuffa matchmaker Sean Shelby told her to "Plan on getting back in within 4 months," *Ex. 103*, which she did. *Ex. 104* ([REDACTED]).

In any event, the allegations are irrelevant. At most, Plaintiffs argue that some UFC athletes faced a delay before they were used. *Ex. 105* at 33. This is insufficient to show "clear nonuse in fact." *Universal Analytics*, 914 F.2d at 1258. And, even if these claims were to be believed, they do not show the "continued pattern" of nonuse necessary to sustain Plaintiffs' claim. *Am. Prof'l*, 108 F.3d at 1153.

## 2. Zuffa's Contracts Did Not Substantially Foreclose Competitors.

The Ninth Circuit has held that there are "well-recognized economic benefits to exclusive dealing arrangements, including the enhancement of inter-brand competition." *Omega Envtl v. Gilbarco, Inc.*, 127 F.3d 1157, 1162 (9th Cir. 1997). "It is widely recognized that in many circumstances [exclusive dealing contracts] may be highly efficient – to assure supply, price stability, outlets, investments, best efforts or the like—and pose no competitive threat at all." *E. Food Servs., Inc. v. Pontifical Catholic Univ. Servs. Ass'n*, 357 F.3d 1, 8 (1st Cir. 2008) (citing *Hovenkamp* ¶¶ 1810-1814b). For this reason, "only those arrangements whose 'probable' effect is to 'foreclose competition in a substantial share of the line of commerce affected'" violate the antitrust laws. *Omega*, 127 F. 3d at 1162; *accord Allied Orthopedic Appliances Inc. v. Tyco Health Care Grp. LP*, 592 F.3d 991, 996 (9th Cir. 2010) (monopolization claim requires proof that party did "foreclose competition in a substantial share of the line of commerce affected").

a. Plaintiffs Assume But Do Not Prove That Zuffa's Exclusive Contracts Foreclose A Substantial Share Of Competition.

Plaintiffs have hinged the success of their Section 2 claim on whether Zuffa's exclusive alleged 30-month contracts<sup>7</sup> substantially foreclose competitors from the market. Ex. 70, Singer I ¶ 171; Ex. 16, Singer Dep. I 269:1-14 ("there's only one necessary condition [to a foreclosure effect] which are this 30-month exclusive provision, if you take them out, the foreclosure goes away"); 165:16-166:4 ("the challenged conduct that's driving the foreclosure if you think about how it's being triggered are the restrictions in the fighter contracts, those are doing the heavy lifting here, and that's the exclusive provision plus the other provisions that cause the contract's duration to exceed 30 months"). If Zuffa's contracts do not substantially foreclose competition, their antitrust claim fails because Plaintiffs' assessment of foreclosure of the market, impact, and damages all *assume* Zuffa's exclusive 30-months contracts are illegal.

Plaintiffs' expert identifies a "foreclosure share" (not a market share) as an input to his models defined as the percentage of contracts with 30-month or more exclusivity. SUF ¶ 37. Because this is a high share of the contracts, he concludes the contracts must be exclusionary. Ex. 70, Singer I ¶ 153. But Plaintiffs' experts have performed no analysis of the extent to which the contracts actually foreclose competition. At a minimum, this requires an assessment of whether other promoters can compete for the contracts at the time they are signed. However, even if there were evidence that the Zuffa's contracts do foreclose competition, Plaintiffs have not shown whether that foreclosure is substantial.

Because "virtually every contract to buy 'forecloses' or 'excludes' alternative sellers from some portion of the market, namely the portion consisting of what was bought," *Barry Wright Corp. v. ITT Grinnell Corp.*, 724 F.2d 227, 236 (1st Cir.1983) (J. Breyer), a foreclosure analysis cannot merely assume that exclusive agreements foreclose competition. *E.g., Mazda v. Carfax*,

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<sup>7</sup> For the sake of argument, Zuffa accepts Plaintiffs' characterization of its contracts as 30-months in length; however, the actual term of Zuffa's contract is shorter. Plaintiffs' 30-month calculation incorrectly assumes an athlete is foreclosed for the entire [REDACTED] right to match period. Ex. 70, Singer I ¶ 88. Athletes can and do contract with other promoters during the right-to-match period. SUF ¶ 22. Plaintiffs have presented *no* evidence of a single athlete who waited the entire [REDACTED] right to match period before signing with a competing promoter.

1 *Inc.*, 2016 WL 7231941 at \*12-13 (S.D.N.Y. 2016) (granting summary judgment in part because  
 2 plaintiffs’ expert—Dr. Singer—assumed that agreement foreclosed competition without  
 3 performing any economic analysis). Yet that is precisely what Plaintiffs’ expert has done here by  
 4 defining an athlete as “foreclosed” if the terms of an athlete’s contract extends an athlete’s  
 5 contract to 30 months or more (regardless of whether the athlete is actually foreclosed from  
 6 competitors for that length of time). Ex. 70, Singer I ¶ 172 n.441.

7 Plaintiffs do not even evaluate how a contract of a shorter duration would impact  
 8 competition in the marketplace. Instead, Dr. Singer assumes that Zuffa’s foreclosure of the  
 9 market would be 0% if its contracts were less than 30 months. Ex. 16, Singer Dep. I 47:4-9 (“If  
 10 the legal standard were 30 months and . . . if Zuffa’s contracts were all 12-month contracts, then  
 11 the foreclosure share by my measure would be zero percent.”); Ex. 12, Singer Dep. II 385:11-17.

12 Rather than evaluate the impact of the duration of the contract *on the market*, Plaintiffs  
 13 have set their definition of foreclosure based on (1) what they believe a “court will find  
 14 exclusionary” and (2) the duration of an exclusive contract that a court would find to be  
 15 exclusionary. Ex. 12, Singer Dep. II 376:2-7 (“what would be a duration that would be  
 16 acceptable to a Court. That to me is really the key element of what you need in a contract to  
 17 bring the foreclosure share to levels of zero, 20 or 30 percent”). Dr. Singer concedes that  
 18 foreclosure is an “input” he assumes in his analysis *based on his knowledge of the law*, rather than  
 19 the *output* of an assessment of the impact of foreclosure on the market. Ex. 16, Singer Dep. I  
 20 39:1-9; 40:4-41:21.

21 Contrary to Dr. Singer’s assertion that 30-month exclusive contracts are unlawful, courts  
 22 have routinely held that exclusive contracts even up to six years are not anticompetitive so long as  
 23 there is sufficient opportunity to compete for each contract at the time it is signed. *Ferguson v.*  
 24 *Greater Pocatello Chamber of Commerce, Inc.*, 848 F.2d 976, 982 (9th Cir. 1988) (affirming  
 25 summary judgment with competition for contract at six-year intervals); *Golden Boy*, 2017 WL  
 26 460736, at \*14; *Ticketmaster Corp. v. Tickets.Com, Inc.*, 2003 WL 21397701, at \*4 (C.D. Cal.  
 27 Mar. 7, 2003), *aff’d*, 127 F. App’x 346 (9th Cir. 2005) (granting summary judgment because  
 28

competitors “have the opportunity to compete for the contract” after it expires); *Methodist Health Servs. Corp. v. OSF Healthcare Sys.*, 859 F.3d 408, 410 (7th Cir. 2017) (affirming summary judgment because “most of the contracts expire every year or two,” giving competitors “a shot at obtaining the next contract”).

There is no evidence that promoters are unable to compete for athletes at the time Zuffa signs an initial contract with them. And promoters *do* compete with Zuffa for athlete services and have access to talented MMA athletes. SUF ¶¶ 21-23; Section II.B *supra*. Despite other options available to them, athletes, including Plaintiffs, have routinely explained numerous reasons why they chose to sign with Zuffa, including the high compensation, superior exposure, extensive promotion, and Zuffa’s professionalism. SUF ¶ 10 (athletes’ reasons they compete for the UFC); *Omega Envtl.*, 127 F.3d at 1164 (“We agree with the unremarkable proposition that a competitor with a proven product and strong reputation is likely to enjoy success in the marketplace, but reject the notion that this is anticompetitive. It is the essence of competition.”).

Courts are justifiably wary of condemning such conduct as anticompetitive. *Weyerhaeuser*, 549 U.S. at 323-25 (the use of high bid prices to compete for inputs is “essential to competition and innovation on the buy side of the market” and potentially beneficial to consumers).

b. Plaintiffs Have Failed To Quantify The Extent To Which  
Competition Is Foreclosed.

Plaintiffs rely on Dr. Singer’s “foreclosure share” as proof of substantial foreclosure, but no reasonable jury could conclude that Dr. Singer’s foreclosure share represents a reasonable estimate of the percentage of overall MMA athletes affected by the contract. Even accepting Dr. Singer’s Ranked market, which as described above is flawed, the percentage of Ranked Zuffa athletes under contract represents only 18.1% of the total available ranked athletes from 2011 to 2016, and that number was never higher than 22% of the ranked athletes. SUF ¶ 36.

Dr. Singer has no compelling justification for disregarding undiscovered, unranked athletes as compared to athletes that Zuffa has discovered. Before an MMA athlete signs with a promoter, any MMA promotion may bid for the athlete’s services. As Dana White explained,

1 “Four years ago, Conor McGregor was available to everybody. Bellator, One FC, UFC,  
 2 everybody out there . . . I saw him, I liked his personality, and I turned him into a star.” Ex. 7,  
 3 White Dep. 332:17-25. The same is true for every other athlete available on the market. Part of  
 4 the success of an MMA promoter is to identify and develop up-and-coming talent. Ex. 56, Coker  
 5 Dep. 101:10-11 (Strikeforce recruited top talent “that we were building from the ground up”); Ex.  
 6 57, C. Silva Dep. 171:13-24 (“World Series of Fighting also grows and creates fighters”); Ex. 52,  
 7 J. Silva Dep. 41:24-42:16 (“[REDACTED]  
 8 [REDACTED]”); Ex. 77, Knapp  
 9 Dep. 51:13-52:1 (“I’m looking for talent”).

10 Dr. Singer justifies his finding that the contracts are exclusionary by calculating that the  
 11 median career duration for an athlete at Zuffa is 0.82 years and the average is 2.00 years. Ex. 49,  
 12 Singer II ¶ 64 & Table 1. This is the duration of a career *at Zuffa*, not an athlete’s MMA career.<sup>8</sup>  
 13 *Id.*; Ex. 12, Singer Dep. II 463:18-464:3. This analysis highlights additional flaws with Dr.  
 14 Singer’s analysis. First, according to Dr. Singer, the average Zuffa athlete is under contract to  
 15 Zuffa for less time than meets his definition of exclusionary. Second, if athletes’ careers are of  
 16 such short duration, Dr. Singer’s failure to give any weight to up-and-coming talent is even more  
 17 inexplicable.

18 The record has many examples of successful Zuffa fighters who have had careers that  
 19 extend long after leaving Zuffa. When athletes’ contracts with Zuffa expire, other MMA  
 20 promotions have bid for and contracted with those free agent athletes. SUF ¶ 21-23; *E.g.*  
 21 *TicketMaster*, 2003 WL 21397701 at \*4. Bellator’s President, for example, testified that “there’s  
 22 not going to be a free agent fighter on the planet that [Bellator] can’t afford and have access to”  
 23 and confirmed that Bellator “picked up a hundred percent of the free agent MMA fighters that it  
 24 went after in 2017.” SUF ¶ 21-23. This included “big fighters” like Rory MacDonald, Gegard  
 25 Mousasi and former UFC champion Benson Henderson, who all signed with Bellator after their  
 26

27 <sup>8</sup> The average MMA career length of athletes who have competed in at least one Zuffa bout is 8.7  
 28 years. SUF ¶ 13; Ex. 50, Topel II ¶¶ 39-40.

1 UFC contracts ended. *Id.* Every year between 2011 and 2016, more than 230 former UFC  
 2 athletes competed for other promotions. *Id.*; Ex. 80, Blair Rep. ¶ 37, Figure 1.

3 Plaintiffs argue that the inability to access *more* talented athletes prevents competition.  
 4 Ex. 70, Singer I ¶ 175. This assertion is incorrect as a matter of law: the antitrust laws protect  
 5 competition; they do not promise competitors the tools to compete with the highest and best  
 6 means. *Gen. Bus. Sys. v. N. Am. Philips Corp.*, 699 F.2d 965, 979 (9th Cir. 1983).

7 c. Zuffa's Has Legitimate Business Justifications For Its Exclusive  
 8 Contracts.

9 "When a legitimate business justification supports a monopolist's exclusionary conduct,  
 10 that conduct does not violate § 2 of the Sherman Act." *Image Tech.*, 125 F.3d at 1212. Here,  
 11 exclusive contracts are widely used by other MMA promoters and have always been used by  
 12 Zuffa. SUF ¶¶ 14-16. Zuffa's witnesses have testified that exclusive contracts are necessary for  
 13 their business to maintain its high output and quality of events. SUF ¶ 14. [REDACTED]

14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]" Ex. 48, Contracts Dep 97:25-98:9. Zuffa's Chief Operating  
 17 Officer described a related concern: "we have a television broadcast deal with Fox broadcasting  
 18 that requires us to deliver a certain number of events. In order for us to get that deal, we have to  
 19 tell them we're able to staff these fights up with events. It's impossible to deliver on a contract,  
 20 and no television network would ever contract with you if you didn't have these arrangements  
 21 with your athletes to deliver them for bouts." Ex. 8, Epstein Dep. 103:6-105:7. This is not a  
 22 hypothetical concern. Record evidence shows that in 2013 and 2014, for example, nearly all of  
 23 Zuffa's events had injured athletes that needed to be replaced. Ex. 106. Courts have previously  
 24 accepted the expansion of output and adherence to high quality as a legitimate business  
 25 justification. *Haagen-Dazs Co. v. Double Rainbow Gourmet Ice Creams, Inc.*, 895 F.2d 1417  
 26 (9th Cir. 1990) (prevention of free riding and distributors wholly committed to marketing  
 27 Haagen-Dazs legitimate justifications); *Race Tires Am. Inc. v. Hoosier Racing Tire Corp.*, 614  
 28



1 F.3d 57, 82 (3d Cir. 2010) (exclusive dealing contract with tire supplier had legitimate business  
2 justifications such as “more exciting races” and increased “car counts”).

3 3. Plaintiffs Have Not Adduced Evidence That The Remaining Challenged  
4 Conduct Is Anticompetitive.

5 The two remaining aspects of Plaintiffs’ challenged conduct—Zuffa’s acquisitions of  
6 certain MMA promoters and alleged “coercion” of athletes to re-sign their contracts—are not  
7 sufficient to defeat a summary judgment motion because neither had a “significant and enduring  
8 impact” on competition. *Am. Prof’l*, 108 F.3d at 1152. Plaintiffs have also failed to show they  
9 suffered any antitrust injury as a result of the challenged conduct. *Cal. Comp.*, 613 F.2d at 746  
10 (“There can be no synergistic result such as [plaintiff] claims from a number of acts none of  
11 which show causal antitrust injury”).

12 a. Plaintiffs Have Presented No Evidence Of Anticompetitive Effects  
13 From Zuffa’s Acquisitions Of MMA Promoters.

14 The “mere fact that a merger eliminates competition between the firms concerned has  
15 never been a sufficient basis for illegality.” 4 Phillip E. Areeda *et al.*, *Antitrust Law* ¶ 901a  
16 (2009). Given these procompetitive efficiencies, Section 7 of the Clayton Act sets out a clear  
17 standard for the ways in which a plaintiff can challenge a horizontal merger and what a plaintiff  
18 must prove if they choose to do so. “To prove an unlawful merger claim under § 7 of the Clayton  
19 Act, a plaintiff must show that the effect of the challenged acquisition ‘may be substantially to  
20 lessen competition, or tend to create a monopoly.’” *Boardman v. Pac. Seafood Grp.*, 822 F.3d  
21 1011, 1021 (9th Cir. 2016) (quoting 15 U.S.C. § 18). Plaintiffs do not bring a Section 7 claim,  
22 nor do they present any evidence to show that any of Zuffa’s acquisitions were anticompetitive.

23 In *Syufy*, the Ninth Circuit affirmed a judgment following a bench trial that a movie  
24 theater operator had not monopolized the Las Vegas movie theater market even though Syufy had  
25 acquired three other theaters in the market that left Syufy temporarily controlling “100% of the  
26 first-run film market in Las Vegas.” *Syufy*, 903 F.2d at 665. Contrary to the government’s theory  
27 that such acquisitions constituted anticompetitive conduct, the Court explained “in a competitive  
28 market, buying out competitors is not merely permissible, it contributes to market stability and



1 promotes the efficient allocation of resources.” *Id.* at 673. “As is often the case when a vigorous  
 2 competitor enters the market, more complacent theatre operators were eliminated, but there was  
 3 no credible evidence that Syufy did anything improper to drive them out.” *Id.* at 672.

4 The record evidence further makes clear that, after Zuffa’s acquisitions, competitors  
 5 entered the market and expanded. *SUF* ¶¶ 18-20; *Sterling Merch., Inc. v. Nestle, S.A.*, 656 F.3d  
 6 112, 125 (1st Cir. 2011) (affirming summary judgment challenging exclusive contracts and  
 7 acquisitions where there was actual entry in the market).

8 b. Plaintiffs Have Not Presented Evidence Of Anticompetitive  
 9 “Coercion.”

10 Plaintiffs have also made allegations of “coercion” of athletes, but have not presented a  
 11 genuine issue of material fact that any alleged “coercion” could have had a “significant and more-  
 12 than-temporary harmful effect on *competition*” to constitute exclusionary conduct. *Am. Prof’l*,  
 13 108 F.3d at 1151. Plaintiffs do not even define coercion, but complain of mean tweets or  
 14 insulting language. *Ex. 105* at 34 (“Zuffa would attack the character of athletes attempting to  
 15 leave the UFC, by having Dana White criticize the Fighter in the media”); *id.* at 35 (matchmaker  
 16 allegedly said “If you don’t like the first opponent I offer you, you sure as hell will not like the  
 17 second”). According to Dr. Singer, Zuffa engages in coercion by offering to re-sign athletes  
 18 before the last bout on their current contracts and paying them *more compensation* under new  
 19 agreements. *Ex. 70*, *Singer I* ¶¶ 77-78. Attempting to re-sign athletes to exclusive contracts by  
 20 offering more money is fully consistent with the procompetitive behavior that exclusive dealing  
 21 arrangements can foster in a market. *Weyerhaeuser*, 549 U.S. at 325; *Balaklaw v. Lovell*, 14  
 22 F.3d 793, 799 (2d Cir. 1994) (exclusive dealing arrangements “may actually encourage, rather  
 23 than discourage, competition because the incumbent and other [competitors] have a strong  
 24 incentive continually to improve the [quality] and prices they offer in order to secure the  
 25 exclusive positions”).

26 No allegation of “coercion,” whether analyzed separately or collectively, raises any triable  
 27 issue of fact. *Race Tires*, 614 F.3d at 79 (affirming summary judgment where “neither the  
 28 lengthy duration of the Hoosier contracts nor their renewal terms represent real evidence of

coercion or interference” and actual terms of form contract “appear to be completely consistent with what one would actually expect to find in an exclusive supply arrangement”); *It’s My Party*, 88 F. Supp. 3d at 495 (granting summary judgment where “individual instances of alleged unlawful behavior” were not “not facial evidence of coercion” as to “permit a reasonable inference of coercion”) (citation omitted).

### III. Zuffa Is Entitled To Summary Judgment On Plaintiffs’ Monopolization Claim.

Because Plaintiffs no longer allege injury based on a monopoly claim, *Daubert Opp*. ECF No. 534 at 36-37, as well as their claim of a scheme of combined monopoly and monopsony, it is not relevant to their theory of injury and should be dismissed. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (claims that do not “cause[] respondents to suffer a cognizable injury” must be dismissed on summary judgment); *Magnetar Techs. Corp. v. Intamin, Ltd.*, 801 F.3d 1150, 1159 (9th Cir. 2015) (affirming summary judgment where no causal antitrust injury).

Evidence confirms that Zuffa could not or did not restrict other promoters’ access to any of the purported requirements for a successful MMA promotion and that Plaintiffs expert has done no analysis of whether Zuffa restricted access to venues (SUF ¶ 29), sponsors (SUF ¶ 30), or broadcasters (SUF ¶ 31):

*Venues:* Zuffa’s competitors have access to hundreds of venues for events across the country and around the world, including venues UFC has used.<sup>9</sup> SUF ¶ 29. There are hundreds of suitable venues across the country and around the world, as evidenced by the number of different venues secured by Bellator, PFL, and others. SUF ¶ 29. As just one example, UFC hosted an

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<sup>9</sup> Zuffa and venues have legitimate business reasons to include short-term “clearance windows” (normally [REDACTED]) that limit the venue from hosting other MMA events, [REDACTED] Ex. 107, Venues Dep. 24:25-25:16; 32:3-10. *Three Movies of Tarzana v. Pac. Theatres, Inc.*, 828 F.2d 1395, 1400 (9th Cir. 1987) (affirming summary judgment regarding clearances windows for movies); *Ticketmaster*, 2003 WL 21397701, at \*5 (C.D. Cal. Mar. 7, 2003) (granting summary judgment where venues, not just defendant, sought exclusive contracts).

1 event at Madison Square Garden in November 2016,<sup>10</sup> WSOF hosted an event there just six weeks  
 2 later,<sup>11</sup> and Bellator hosted an event there six months later.<sup>12</sup> Courts have previously rejected  
 3 claims that suitable venues could be “locked-up” when so many alternatives exist. *Golden Boy*,  
 4 2017 WL 460736, at \*16 (granting summary judgment where boxing events “there are numerous  
 5 alternative venues in most major metropolitan areas of the United States”); *see also Aerotec Int’l*,  
 6 *Inc. v. Honeywell Int’l, Inc.*, 836 F.3d 1171, 1185 (9th Cir. 2016) (affirming summary judgment  
 7 because “reasonable access to the essential facility exists—even if not in a way that is conducive  
 8 to [plaintiff]’s existing business model”) (citation omitted).

9 *Sponsors:* Zuffa’s competitors have access to sponsors. SUF ¶ 30. Zuffa generally  
 10 contracts with a single sponsor in certain product categories (apparel, beverage company, etc.).<sup>13</sup>  
 11 Ex. 112, Sponsors Dep. I 21:20-22:2, 73:4-9, 106:3-106:21. Zuffa’s competitors are free to (and  
 12 do) contract with any other company in those categories, as well as sponsors in any category in  
 13 which UFC does not have an exclusive sponsor, and to compete for Zuffa’s exclusive sponsor  
 14 partners at the end of the exclusive contract. Testimony confirms that competitors have their  
 15 choice of marquee sponsors. SUF ¶ 30

16 *Broadcasters:* Given the many television channels, streaming options, and online forms  
 17 of distribution which could and do broadcast MMA bouts, competitors have access to a multitude  
 18 of broadcasting options. SUF ¶ 31; *Golden Boy*, 2017 WL 460736, at \*15 (granting summary  
 19 judgment regarding exclusive broadcast agreements where “there were both existing and potential  
 20 alternative channels of distribution available to Golden Boy”); *Omega Envtl.*, 127 F.3d at 1163.

21 As discussed above in Sections I.B and II.B.3, circumstantial evidence does not support a  
 22 claim that UFC has monopoly power in an output market through proof of high market share in a  
 23

24 <sup>10</sup> Ex. 108 (UFC press release).

25 <sup>11</sup> Ex. 109 (PFL event recap).

26 <sup>12</sup> Ex. 110 (Bellator event recap).

27 <sup>13</sup>

28 Ex. 111, Sponsors Dep. II 264:5-265:4.

Ex. 112, Sponsors Dep. I 21:22-22:5, 72:22-73:12.

relevant market characterized by high barriers to entry and the inability of existing competitors to expand. *Rebel Oil*, 51 F.3d at 1434.

A. Plaintiffs Lack Direct Evidence Of Zuffa’s Alleged Monopoly Power.

1. No Supracompetitive Prices.

A mere allegation of a price increase cannot prove market power. Rather, “market power is the ability to raise prices above those that would be charged in a competitive market.” *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 109 n.38 (1984); *Rebel Oil*, 51 F.3d at 1434 (“Without market power to increase prices above competitive levels, and sustain them for an extended period, a predator’s actions do not threaten consumer welfare”).

Plaintiffs allege one increase in PPV prices signifies Zuffa’s supracompetitive pricing, Ex. 70, Singer I ¶ 147, but present no evidence related to ticket prices at the event. From 2008 to 2015, the PPV price of UFC events remained unchanged. SUF ¶ 11. In 2015, Zuffa implemented a \$5 increase in PPV price to \$50 [REDACTED]

[REDACTED] *Id.* Plaintiffs make no attempt to offer evidence of competitive prices and costs that is required to demonstrate that Zuffa’s \$5 price increase is supracompetitive. *In re Ebay Seller Antitrust Litig.*, 2010 WL 760433, at \*5 (N.D. Cal. Mar. 4, 2010), *aff’d*, 433 F. App’x 504 (9th Cir. 2011) (granting summary judgment where “Evidence that eBay has raised prices over a period of years . . . proves nothing with respect to whether the prices are supracompetitive”).

2. No Reduction In Output.

A restriction in output requires a showing that “by restricting [a defendant’s] own output, it can restrict marketwide output and, hence increase marketwide prices.” *Rebel Oil*, 51 F.3d at 1434. Zuffa has not restricted its own output during the Class Period. SUF ¶ 7. Instead, Zuffa’s total number of live MMA events increased from 32 in 2010 to 41 in 2016. *Id.*

Plaintiffs argue that Zuffa reduced output when the number of PPV events went from 15 events in 2010 to 13 events in 2015. Ex. 70, Singer I ¶ 201. But Plaintiffs have defined a market for live MMA bouts, not PPV events, CAC ¶ 55, and Zuffa’s output must be viewed in relation to the alleged market. Regardless, Plaintiffs have presented no evidence—*e.g.*, a consumer survey

1 or otherwise—that Zuffa would have (or even could have) expanded output even more absent the  
 2 challenged conduct. *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 233  
 3 (1993) (granting judgment as a matter of law where output “expanded at a rapid rate” following  
 4 the alleged predation and where there was no record evidence output “would have been greater”  
 5 without the defendant’s entry). Plaintiffs’ economists never attempt to show that Zuffa’s  
 6 actions—as opposed to market forces like changes in supply or demand—led to a change in  
 7 overall output in the market.

8 IV. Plaintiffs Have Failed To Support Their Identity Class Claim With Admissible Evidence.

9 Plaintiffs have abandoned their initial theory of liability that the “Identity Class” was  
 10 purportedly harmed as a result of granting certain perpetual rights to Zuffa. CAC ¶ 92. Plaintiffs  
 11 now make a half-hearted attempt to continue pursuing their identity rights claim as a tag-along  
 12 theory to their Bout Class claim, but have failed to present any evidence showing that members of  
 13 the Identity Class were harmed as a result of the challenged conduct.

14 Plaintiffs have not proven that the so-called “Identity Rights” Agreements are  
 15 anticompetitive. When an athlete competes in a UFC bout, the UFC owns the intellectual  
 16 property associated with that broadcast. SUF ¶ 17. Zuffa’s agreement restrains athletes from  
 17 using UFC trademarks, programs, and intellectual property which is legal, competitive activity to  
 18 protect that property. *In re Apple iPod iTunes Antitrust Litig.*, 796 F. Supp. 2d 1137, 1145 (N.D.  
 19 Cal. 2011) (refusal to license intellectual property does not violate Section 2). Under the contract,  
 20 athletes are free to, and do, sell or license their identity rights to other purchasers of their  
 21 identities despite their limited identity rights to Zuffa. SUF ¶ 17. Even without the athletes’  
 22 grant of rights, no other MMA promoter would be entitled to use to Zuffa’s copyrighted works,  
 23 like its event broadcasts, without permission.

24 Further, none of Plaintiffs experts did any separate economic modeling for the Identity  
 25 Class to show that the challenged conduct caused that class any injury. Ex. 16, Singer Dep. I  
 26 218:4-7. Instead, Plaintiffs argue that Dr. Singer’s regression that purports to calculate effects for  
 27 the Bout Class can be applied to the Identity Class as well. Ex. 70, Singer I ¶ 237. Even  
 28

1 accepting Dr. Singer's regression as capable of showing impact to the Bout Class (it cannot), no  
2 reasonable jury could find that this regression shows harm to the Identity Class. Dr. Singer's  
3 regression purports to show that as Zuffa's share of athletes under exclusive 30-month contracts  
4 increases, the share of event revenue to athletes decrease. This has nothing to do with the use,  
5 grant, or payment for identity rights. Plaintiffs here have failed to show how Zuffa's actions have  
6 reduced competition for athletes' identity rights.

7 Plaintiffs' expert contends without any economic analysis that in a but-for world athletes  
8 would have received [REDACTED] for the grant of their identity rights. This assertion merely assumes  
9 but does not prove that all Identity Class members were harmed by the challenged conduct.

10 Pursuant to this Court's Order, Zuffa incorporates by reference its motion for partial  
11 summary judgment that the statute of limitations bars many of the Identity Class claims and  
12 requests a ruling on that motion along with this summary judgment motion. ECF Nos. 347, 388.

13 V. Plaintiffs Do Not Have Standing To Bring Claims For Injunctive Relief

14 For the reasons stated in Zuffa's class certification opposition, Plaintiffs lack standing to  
15 pursue injunctive relief; therefore, these claims must be dismissed. ECF No. 540 at 40.

16 **CONCLUSION**

17 For the foregoing reasons, Zuffa respectfully requests that the Court grant summary  
18 judgment in its favor.

1  
2 Dated: July 30, 2018

Respectfully Submitted,

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4  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing **Zuffa's Motion for Summary Judgment** was served on July 30, 2018 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Roderick Crawford

An employee of Boies Schiller Flexner